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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,297	08/22/2001	Dwayne Lacey	100 007 CIP	9672
25191	7590	12/09/2003		EXAMINER
BURR & BROWN PO BOX 7068 SYRACUSE, NY 13261-7068			DEMILLE, DANTON D	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 12/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/935,297	LACEY, DWAYNE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Danton DeMille	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 September 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 and 6-33 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 and 6-33 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-4, 6-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robbins et al. in view of Rabin et al. or Blachly.** Even though applicant claims priority to 09/335,714, the claims in the instant application are drawn to the new matter including the vibrator handle that was introduced for the first time on 8/22/2001. Therefore, the effective filing date for these claims is 8/22/2001. The invention disclosed in the patent to Robbins was known to others on 7/21/2000 more than one year before the filing date of the instant application.

Robbins teaches a head massaging device comprising a plurality of resilient fingers having the head receiving space and opening claimed. Robbins may not teach an electric vibrator in combination however, in the art of head massaging both Rabin and Blachly teach such a convention. Both Rabin and Blachly teach head massage devices with resilient fingers for massaging the scalp including vibrators to enhance the massage. It would have been obvious to one of ordinary skill in the art to modify Robbins to include a vibrator as taught by Rabin and Blachly to enhance the massaging effect on the scalp.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 2, 7, 15-17, 23, 26, 27, 29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rabin et al.** Rabin teaches a plurality of resilient fingers 12 and an electric vibrator including motor 28 including an eccentric weight. As shown in figure 8, the fingers form a head receiving space and opening as claimed.

**Claims 1-3, 7-10, 15-19, 23, 26-29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Taylor.** Taylor teaches a plurality of resilient fingers 16 and an electric vibrator 14. As shown in figure 1, fingers 16 form the head receiving space and the opening as claimed. The fingers 16 comprise bending wire 45.

**Claims 1, 4, 6-8, 10, 13-17, 19, 22-27, 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erickson in view of Rabin et al.** Erickson teaches a plurality of resilient fingers S and an electric vibrator M, 14 coupled to the opposite ends of the fingers. While it is not clear if the fingers of Erickson has the claimed shape there appears to be no unobviousness to shape the fingers as desired to best conform to the shape of a person's head. Rabin teaches an equivalent head massaging device with fingers that are a little longer such that they curve inwardly at the ends to have the claimed shape. It would have been obvious to one of ordinary skill in the art to modify Erickson to shape the fingers to be a little longer as taught by Rabin so as to cover more of the head and massage more area.

**Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 32 above, and further in view of Rowe.** It would have been obvious to one of ordinary skill in the art to further modify Erickson to include a spherical end to the fingers as taught by Rowe to prevent injury to the skin and to allow smooth movement of the

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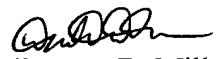
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fingers over the skin.

***Response to Arguments***

Applicant's arguments with respect to claims 1-4 and 6-33 have been considered but are moot in view of the new ground(s) of rejection.

ddd  
4 December, 2003  
 (703) 308-3713  
Fax: (703) 872-9306  
[danton.demille@uspto.gov](mailto:danton.demille@uspto.gov)

  
Danton DeMille  
Primary Examiner  
Art Unit 3764